

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**
No. 5:19-cv-249-FL

MATTHEW BRADLEY,)	
Plaintiff,)	
)	
- against –)	DECLARATION OF
)	MATTHEW BRADLEY
)	
ANALYTICAL GRAMMAR, INC.)	
)	
)	
Defendant.)	

MATTHEW BRADLEY, under the penalty of perjury, declares as follows based on the best of his personal knowledge and/or good faith belief:

1. I am the plaintiff in this action.
2. I am over the age of 18 years old and competent to submit this declaration in support of my motion for partial summary judgment against the defendant Analytical Grammar, Inc. (“Defendant”) as to liability for copyright infringement under 17 U.S.C. § 501.
3. I work as a freelance technological consultant. I have an undergraduate degree from Cornell majoring in physics, and a master’s degree in mechanical engineering from Penn State University.
4. In my free time, I enjoy creating photographs of clever puns and posting them on social media. For sake of clarity, a pun makes a play on the different possible meanings of a word. They are also called “memes” when they become popular, i.e., “viral,” in the context of social media.

Initial Publication of the “Wrong on So Many Levels” Photograph – December 8, 2017

5. I frequently take photographs of things which I think are amusing and share them on my personal Facebook page.

6. On December 8, 2017, I created a Photograph which depicts the word “wrong” handwritten on blue scotch tape and attached to various different carpentry levels, i.e., devices typically used in construction projects as measuring tools (the “Photograph”). Attached as Exhibit A is true and correct copy of the Photograph.

7. In creating the Photograph, I devised the concept, arranged and positioned the carpentry levels, and wrote the word “wrong” on the scotch tape in my own handwriting. I also selected the perspective, composition, angle, lighting, and camera equipment used to create the Photograph.

8. After creating the Photograph, I posted it to my personal Facebook account which bears my name “Matthew Bradley” directly above where the Photograph was first displayed. The caption I created to accompany the photo reads: “THIS IS WRONG ON SO MANY LEVELS.” The original post is dated December 8, 2017 at 5:02 p.m.

My Initial Registration of the Photograph – December 14, 2018

9. On December 14, 2018, I applied for registration of the copyright with the United States Copyright Office (“USCO”). Attached as Exhibit B is a true and correct copy of the registration certificate, bearing number VAu 1-355-121, with effective date of December 14, 2018. Because I had never registered a copyright before, I mistakenly registered the Photograph as an unpublished work, even though it had already been published.

10. My impetus for registering the Photograph with the Copyright Office is that I observed on-line users re-posting my Photograph and passing it off as their own work. If Facebook users simply re-shared my original Facebook post, bearing my name, there would be

no problem because then I would receive credit for the Photograph. Moreover, users could then link back to my Facebook account and access my other works. But when certain users, whether on the Facebook platform or outside, re-published the Photograph to their own accounts or websites and took credit for my original work, then I believed that my rights were being violated. I could not allow others to steal the work and pass it off as their own. So copyright protection became necessary, particularly given the popularity of the Photograph.

Editing of the Original Facebook Post – December 14, 2018

11. On December 14, 2018, after registering the copyright in the Photograph with the USCO, I edited my original Facebook post by superimposing text in the right hand corner of the Photograph which reads: “copyright 2018 Matthew J. Bradley.” I also superimposed the caption “This is wrong on so many levels” over the Photograph in white block letters. Finally, I included the following language underneath the text of the caption:

“please note that this picture is copyrighted. I appreciate all of you who shared it (very unexpectedly). Some people, however, are passing it off as their own work. I took the picture with my phone. This is the original photo (meme added). If you see anyone violating this copyright, please let me know. Thanks.”

12. Attached as Exhibit a C is a true and correct copy of the Facebook post as it appeared on December 14, 2018 (the comments of other Facebook users have been omitted).

13. Attached as Exhibit D is a true and correct copy of the edit history of my Facebook Post, showing that the Photograph was first published on my Facebook account on December 8, 2017 and then edited on December 14, 2018. My name “Matthew Bradley” was conveyed in direct connection with each posting of the Photograph.

14. On December 14, 2017, I had made other edits to the original Facebook post to include a hyperlink to my blog. This was because the popularity of the Photograph could lead people to visit my personal blog. *See Ex. D.*

Defendant's Infringing Activity – December 16, 2017

15. On December 16, 2017, six days after the Photograph was initially published on my Facebook page, Defendant re-published the Photograph on its business-related Facebook account with the same caption that I had originally associated with the Photograph: “This is wrong on so many levels.” Attached as Exhibit E is a true and correct copy of a screenshot which shows the Defendant’s re-publication of the Photograph on its Facebook business page.

16. Critically, Defendant did not re-share my original Facebook Post which included the Photograph. Rather, Defendant uploaded the Photograph to its own Facebook account and passed off the Photograph (and caption) as if it was Defendant’s own creation.

17. Defendant did not seek my permission or consent to re-publish the Photograph on its Facebook business page. I never granted Defendant authorization to copy the Photograph or distribute copies of the Photograph to the public.

18. Prior to Defendant’s publication of the Photograph on its Facebook page, there was no communication between myself and Defendant concerning the Photograph.

19. Before this lawsuit was filed, there was no communication between myself and Defendant concerning the Photograph.

Second Copyright Registration of the Photograph – January 3, 2019

20. My counsel, Liebowitz Law Firm, PLLC (“LLF”), enforces my rights against copyright infringers. As part of the services it provides, the Firm registers photographs with the U.S. Copyright Office (“USCO”).

21. After learning that my original copyright registration contained an error, I authorized LLF to register the Photograph with the USCO on my behalf.

22. I am in possession of a registration certificate for the Photograph, bearing number VA 2-133-725, with effective date January 3, 2019 (the “725 Registration”). Attached as Exhibit

F is a true and correct copy of the 725 Registration, along with the application for registration. This registration is for a published work.

23. I obtained the 725 Registration on January 3, 2019, within five years after first publication of the Photograph, which took place on December 8, 2017.

My Efforts to Enforce the Copyright in the Photograph

24. Beginning in December 2018, after filing for copyright registration of the Photograph, I began to enforce my copyright against infringers. Attached as Exhibit G are true and correct copies of e-mails from me to alleged infringers, dated December 14, 2018 and December 17, 2018.

25. On or about December 24, 2018, I retained LLF to enforce my copyright on my behalf.

Defendant Analytical Grammar, Inc.

26. Defendant is a for-profit company and sophisticated purveyor in the publishing industry. According to the curriculum vitae of the company's principal owner, Erin M. Karl, the company designs and sells literature to private schools, writes and designs market curricula, and operates a Facebook "business page [which] has engagement in the millions." Ms. Karl is also "an experienced newspaper editor" and "well-versed in social media." Attached as Exhibit H is a true and correct copy of Ms. Karl's curriculum vitae, with relevant portions highlighted.

Facebook Terms of Service

27. According to Facebook's terms of service, I own the copyright to the Photograph even after posting it to my Facebook page. In addition, while I granted Facebook a license to use the Photograph, such license does not extend to unauthorized use by Defendant (which admits that it does not have a license from Bradley). Attached as Exhibit I is a true and correct copy of

Facebook's terms of service.

Dated: Windsor, California

Executed this 17th Day of July 2020.

A handwritten signature in black ink, appearing to read "Matthew Bradley", is positioned above a horizontal line.

MATTHEW BRADLEY